LEONG TENG HIN v. TSUNEYOSU TOBUSE

[O.C.J. (Sinnathuray J.) March 13, 1979]
[Singapore — Summons in Chambers No. 903 of 1979 in Suit No. 696 of 1979]

Practice and Procedure — Debtors — Debtor with alleged intention to abscond — Arrest — Affidavit containing wrong facts — Release — Court's exercise of discretion — Debtors Act (Cap. 19), s. 13(1) & (2).

Debtors — Arrest of debtor — Release — No security furnished — Court's exercise of discretion — Debtors Act (Cap. 19), s. 13(1) & (2).

The plaintiff in this case issued a writ against the defendant, a Japanese citizen, on March 8, 1979. The claim was for a sum of money alleged to be owing by the defendant. On March 12, 1979, the plaintiff took out an application, under the Debtors Act, for the arrest of the defendant. In his affidavit for the application, the plaintiff affirmed that on March 9, 1979 his colleague, one Abdul Rahim, contacted the defendant who was in Kuala Lumpur by telephone. The defendant was alleged to have told Abdul Rahim that he intended to leave Singapore and abscond. The defendant was arrested under section 13(1) of the Debtors Act.

The defendant filed an affidavit setting out facts to show that he had no intention to abscond. The defendant was not in Kuala Lumpur but in Singapore on March 9 as shown by the endorsement in his passport.

Held: (1) a person who files an affidavit, especially under the Debtors Act, must ensure that he has got his facts right;

(2) under section 13(2) of the said Act, it is only when the defendant fails to show cause that the court or judge will order him to furnish security;

(3) in exercise of the court's discretion, the defendant who had shown cause completely should be released without having to furnish security.

SUMMONS IN CHAMBERS.

Tan Bock Huat for the plaintiff/applicant.

H.T. Sam for the defendant/respondent.

Tan Seck Sam (Assistant Registrar) for the Sheriff.

Sinnathuray J. (delivering oral judgment): The plaintiff issued a writ against the defendant, a Japanese citizen, on 8th of March 1979. The claim is for a sum of money alleged to be owing by the defendant. On 12th of March, yesterday, he took out an application, under the Debtors Act, for the arrest of the defendant. In the affidavit for the application, the plaintiff affirmed that on 9th of March his colleague, one Abdul Rahim, contacted the defendant who was in Kuala Lumpur by telephone. He said in that paragraph of the affidavit that the defendant told Abdul Rahim that he intends to leave Singapore and abscond. The plaintiff having satisfied me that the defendant carries on business in Singapore, that he has a good cause of action against the defendant and on the facts set out in the affidavit which I have referred to that the defendant intends to leave Singapore and abscond, I made an order for the arrest of the defendant under section 13(1) of the Act.

The defendant was arrested and produced before me late yesterday afternoon to show cause why he should not furnish security for his appearance. On the facts the defendant told me through his counsel, I released him, without requiring him to furnish any security, to appear in court this morning. I am pleased to see he has faithfully obeyed by being here now.

He has also filed a lengthy affidavit setting out facts to show that he has no intention to abscond. In the affidavit he has said that not only he and the plaintiff have had business transactions but also that they are engaged in business together. On the crucial fact that led to his arrest, the defendant has affirmed in his affidavit that he was not in Kuala Lumpur but in Singapore on 9th of March. The endorsement in his passport and the return air tickets confirm his statement. Clearly then, Abdul Rahim, who has also filed an affidavit this morning that he made the telephone call on 9th of March to Kuala Lumpur, has told an untruth. Also, the plaintiff's affidavit based on information given to him by Abdul Rahim that the defendant intends to abscond, which are very strong words, is now shown to be wrong. I must stress that a person who files an affidavit, especially under the Debtors Act, must ensure that he has got his facts right. In this case the defendant had been in Singapore on 9th of March, is in Singapore today and has given facts which clearly show that he has no intention to leave Singapore without settling the plaintiff's claim.

Next, I turn to the question of law. Counsel for the plaintiff has asserted in his submission that the plaintiff is as of right entitled to demand that the defendant furnishes security. This is an absurd submission. The defendant was arrested on the exercise of a discretion given to me under the Debtors Act. He is before me to show cause. Under section 13(2) of the Act, it is only when the defendant fails to show cause that the court or judge will order him to furnish security. Again, it is a matter for the exercise of a discretion by me. The defendant has shown cause completely to my satisfaction. He is released forthwith.

Order accordingly.

Solicitors: *Tan Jin Hwee & Co.; H.T. Sam & Co.*

TAN CHOON CHYE v. SINGAPORE SOCIETY OF ACCOUNTANTS

[A.C.J. (Wee Chong Jin C.J.) March 27, 1979]
[Singapore — District Court Appeal No. 70 of 1977]

Accountants — Professional misconduct — Disciplinary proceedings — Accountant found guilty of "grave impropriety or infamous conduct in a professional respect" — "Formal complaint" — Meaning of — Accountants Act (Cap. 212), ss. 22, 32(a) & (b), 33 & 34.

Administrative Law — Disciplinary proceedings — Rules of natural justice.

The appellant, an accountant, was charged for "grave impropriety or infamous conduct in a professional respect." The charge arose out of a letter of April 1, 1976 from the Director of the Corrupt Practices Investigation Bureau to the Registrar. The appellant was alleged to have collected $50,000 from one Lou, an industrialist, and to have given the money as a bribe to one Wan, a Project Officer of EDB, for considering his application for registration under the Control of Manufacture Act. The said Wan had also obtained bribes through the appellant from one Fong. The said Wan was charged and convicted accordingly.

The Disciplinary Committee found that the appellant had acted as an intermediary in his capacity as a practising accountant in connection with the said bribery offence in which the appellant had collected $50,000 from one Lou and gave the money as a bribe to Wan.